

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 721 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

BHARATKUMAR BHAGWANDAS SHARMA

Versus

STATE OF GUJARAT

Appearance:

MS SM AHUJA for Petitioner

MR SR DIVETIA APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/12/98

ORAL JUDGEMENT

Rule returnable today. Learned APP Mr. S.R Divetia appears and waives service on behalf of the State.

This application has been preferred under Section

397 CrPC against the order dated 10th December, 1998 made by the learned Sessions Judge, Sabarkantha below Exh. 27 in Criminal Case No. 4 of 1998. In the aforesaid Criminal Case No. 4 of 1998, the respondent no. 2 herein is the accused who is facing trial for commission of offence punishable under Section 302 IPC. In the incidence which occurred on the railway platform, the brother of the present applicant lost his life. The Station Master was the informant. It appears that the trial has commenced and all the witnesses, including the informant have turned hostile. Besides, it is learnt that there were three eye-witnesses of the incident in question who have not been referred to in the chargesheet lodged against the respondent no. 2 by the police, however, those statements have been produced in the Sessions Case No. 3 of 1998 where the said three persons are the accused and the respondent no. 2 herein is the informant. The applicant herein, therefore, made an application Exh. 27 requesting the Court to examine those three eye-witnesses as the Court Witnesses. The learned Judge, after hearing the applicant and the defence held that the Application Exh. 27 was made with malafide intention with a view to delaying the trial so that the accused - respondent no. 2 herein may not get acquitted and that he should remain in judicial custody for a longer time. The reasoning adopted by the learned Judge does not appear to be sound. If it is in the interest of justice to examine any witness, it is the duty of the Court to examine such witness as the Court witness.

In the present case, it does appear that all the prosecution witnesses, including the informant, have turned hostile and the three persons who were present at the time of incidence are not examined by the prosecution. It would be in the interest of justice that those three persons named in Application Exh. 27 viz., Kishanbhai Gordhandas Chandhwani, Vijaybhai Bachhubhai Vaghari and Karimbhai Ibbrahimbhai Mansuri are examined as the Court-witnesses. The impugned order dated 10th December, 1998 is, therefore, set-aside. The trial Court may proceed further with the trial and summon the above referred three persons to be examined as Court witnesses. Application is allowed accordingly. Rule is made absolute. Direct service is permitted.

Prakash*